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20 **IN THE UNITED STATES DISTRICT COURT**  
21 **FOR THE NORTHERN MARIANA ISLANDS**

22 SARDINI GROUP, INC,

23 Plaintiff,

24 v.

25 IMPERIAL PACIFIC INTERNATIONAL  
26 (CNMI), LLC,

27 Defendant.

28 CASE NO. 1:20-cv-00007

29 **DEFENDANT'S BRIEF REGARDING**  
30 **REMOTE TESTIMONY FROM CHINA**  
31 **AND MOTION TO STRIKE**  
32 **TESTIMONY**

33 Hearing: February 7, 2023  
34 Time: 9:00 AM ChST  
35 Judge: Hon. Ramona V. Manglona

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1           **I. INTRODUCTION**

2           At a December 15, 2022 status conference, the Court *sua sponte* raised the issue of whether  
 3 the virtual testimony of witnesses located in the People’s Republic of China (“China”) constitutes a  
 4 violation of Chinese law and, if so, the appropriate remedy. ECF No. 89. Specifically, the Court  
 5 directed Defendant Imperial Pacific International (CNMI), LLC (“IPI”) and Plaintiff Sardini Group  
 6 Inc. (“Sardini”) to address (1) whether the taking of testimony in this case from witnesses  
 7 appearing remotely from China violated Chinese law and, if so, (2) what is the appropriate remedy  
 8 given the procedural posture of this case.

9           The language of Article 284 of The Civil Procedure Law of the People’s Republic of China  
 10 (“Article 284”),<sup>1</sup> findings by other federal and CNMI courts, as well as other relevant sources,  
 11 establish that offering and eliciting virtual court testimony of witnesses located in China is a  
 12 violation of Chinese law that could subject all participants—including the witnesses, counsel, court  
 13 personnel and the Court—to penalties under Chinese law. The Court should thus decline to allow  
 14 testimony to be proffered by remote witnesses located in China. To cure any prior violations in this  
 15 case, the Court should strike the testimony taken remotely from China from the record, such that  
 16 the testimony given would not be deemed “evidence” (which, per the language of Article 284, is  
 17 key to violative conduct). Due to the procedural posture of this case, Plaintiff would still have an  
 18 opportunity to remedy any prejudice suffered by being afforded an opportunity to present its  
 19 witness testimony live in Saipan or remotely from another location outside of China. Finally,

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 21           <sup>1</sup> Article 284 is the successor (and identical to) to Article 277 of The Civil Procedure Law of the  
 22 People’s Republic of China. See *Glam & Glitz Nail Design, Inc. v. iGel Beauty, LLC*, No.  
 23 SACV2000088JVSDFMX, 2022 WL 17078947, at \*1 (C.D. Cal. Sept. 30, 2022).

1 should the Court fail to strike the prior testimony, IPI would be prejudiced as it would be required  
 2 to continue violating Chinese law, or to forfeit its opportunity (specifically allowed by this Court  
 3 due to the Plaintiff's mid-trial discovery productions) to recall Plaintiff's witnesses for cross-  
 4 examination.

## 5 **II. PROCEDURAL BACKGROUND**

6 The bench trial in this matter began on August 2, 2022, and continued through August 5,  
 7 2022, at which date the Court continued the bench trial to August 24, 2022. *See* ECF Nos. 75, 77,  
 8 78, 79. During those four days of bench trial, several of Sardini's witnesses, namely Shi Jun (5th  
 9 witness, August 3-4, 2022), Yunlong Lu (6th witness August 4, 2022), and Qing Zuo (7th witness,  
 10 August 4-5, 2022) testified remotely from locations in China. The Court subsequently continued  
 11 the resumption of the bench trial multiple times; it is now scheduled to resume on February 7,  
 12 2023. ECF No. 89.

## 13 **III. ARGUMENT**

- 14 A. Chinese law bars foreign authorities, including this Court, from taking testimony  
from witnesses appearing virtually from China without first obtaining permission  
from Chinese authorities.

16 The primary question here is whether Article 284 prohibits remote testimony of individuals  
 17 located in mainland China. "In determining foreign law, the court may consider any relevant  
 18 material or source, including testimony, whether or not submitted by a party or admissible under  
 19 the Federal Rules of Evidence." Fed. R. Civ. P. 44.1; *see also Animal Sci. Prods. v. Hebei*  
 20 *Welcome Pharm. Co.*, 138 S.Ct. 1865, 1869-70 (2018) ("[T]he court may engage in its own

1 research and consider any relevant material thus found.”) (citation and internal quotation marks  
 2 omitted).

3 In determining whether to accept remote testimony from witnesses located in China, U.S.  
 4 District Courts look to Article 284 as well as sources interpreting that law, including guidance from  
 5 the U.S. State Department. Article 284 has been translated to read:

6 The request for and provision of judicial assistance shall be conducted through the  
 7 channels stipulated in the international treaties concluded or acceded to by the People’s  
 Republic of China. Where no treaty relations exist, the request for and provision of  
 8 judicial assistance shall be conducted through diplomatic channels.

9 The embassy or a consulate in the People’s Republic of China of a foreign state may  
 10 serve documents on, investigate, and take evidence from its citizens, provided that the  
 law of the People’s Republic of China is not violated and that no compulsory measures  
 are adopted.

11 Except for the circumstances set forth in the preceding paragraph, *no foreign agency or*  
*12 individual may, without the consent of the competent authorities of the People's Republic*  
*of China, serve documents, carry out an investigation or collect evidence within the*  
*territory of the People's Republic of China.*

13 See *Modern Investment, Inc. v. Sunleader (Saipan) Co. LTD, et al.*, No. 19-0266, at 3 (N. Mar. I.  
 14 Commw. Super. Ct. Apr. 8, 2021) (emphasis added) (attached hereto as Exhibit A pursuant to L.R.  
 15 5.2(b)).

16 The plain language of Article 284 is clear: foreign agencies or individuals may not collect  
 17 evidence within China without the consent of Chinese authorities. Based on the plain language of  
 18 Article 284 as well as sources interpreting that law, U.S. District Courts have consistently  
 19 concluded that U.S. courts may not take testimony from witnesses located in Mainland China  
 20 without permission from the appropriate Chinese authorities. See *Shenzen Synergy Digital Co. v.*  
*Mingtel, Inc.*, No. 4:19-CV-00216, 2021 WL 6072565, at \*2 (E.D. Tex. Dec. 23, 2021) (“[b]oth

1 parties do not dispute, and the Court agrees, that oral testimony is not permitted to be taken from  
 2 witnesses located in Mainland China for use in foreign courts without permission from Chinese  
 3 authorities"); *Junjiang Ji v. Jling Inc.*, No. 15-CV-4194, 2019 WL 1441130, at \*11 (E.D.N.Y. Mar.  
 4 31, 2019) (striking plaintiff's trial testimony given from China in its entirety and precluding  
 5 plaintiff from further testifying remotely in the case); *Modern Investment, Inc.*, No. 19-0266, at 16  
 6 ("The parties have not provided, and the Court has not found any[] caselaw in which a witness was  
 7 permitted to testify from China").

8 Even in cases in which parties have attempted (almost entirely unsuccessfully) to argue that  
 9 witnesses may be voluntarily deposed from within China, they have acknowledged that a *foreign*  
 10 *court* could not legally (under Chinese law) take testimony from a witness located in China. For  
 11 example, in *Glam & Glitz Nail Design, Inc.*, the plaintiff, seeking to take the voluntary deposition  
 12 of a witness located in China, argued that while "Article 284 prohibits foreign courts from  
 13 collecting evidence within China without prior authorization but [it] does not contemplate a foreign  
 14 litigant self-collecting testimony from a willing Chinese witness." No. SACV2000088JVSDFMX,  
 15 2022 WL 17078947, at \*1 (C.D. Cal. Sept. 30, 2022) (emphasis in original). In that case, however,  
 16 the court considered the plain language of Article 284, other U.S. case law, and U.S. State  
 17 Department guidance on Taking Voluntary Depositions of Willing Witnesses,<sup>2</sup> before ultimately  
 18 concluding that even a voluntary deposition should not be taken from a witness within mainland  
 19 China. *Id.* at \*2-4.

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 21 <sup>2</sup> The State Department has concluded that "China does not permit attorneys to take depositions in  
 22 China for use in foreign courts." The Department explained that "[u]nder its Declarations and  
 23 Reservations to the Hague Evidence Convention and subsequent diplomatic communications,  
 24 China has indicated that taking depositions, whether voluntary or compelled, and obtaining other  
 evidence in China for use in foreign courts may, as a general matter, only be accomplished

1       Similarly, virtually all other courts that have considered the issue of whether a deposition  
 2 may be taken from a witness in China have concluded that “it is undisputed that the ‘law of China  
 3 prohibits’ depositions—voluntary or compelled—for use in foreign courts” when taken from within  
 4 the borders of China without permission from Chinese authorities.<sup>3</sup> *Inventus Power v. Shenzhen*  
 5 *Ace Battery*, 339 F.R.D. 487, 500 (N.D. Ill. 2021) (citing *Yan v. Zhou*, No. 18-CV-  
 6 4673(GRB)(JMW), 2021 WL 4059478, at \*3 (E.D.N.Y. Sept. 7, 2021)); *see also United States v.*  
 7 *Tao*, No. 19-20052-JAR, 2021 WL 5205446, at \*9 (D. Kan. Nov. 9, 2021) (concluding that  
 8 “remote depositions would put participants at risk of violating Chinese law” and requiring that the  
 9 Chinese government authorize the depositions first); *Flexsteel Pipeline Techs., Inc. v. Chen*, No.  
 10 5:16-CV-239-TKW-GRJ, 2019 WL 13164175, at \*2 (N.D. Fla. Nov. 26, 2019) (acknowledging the  
 11 “legal constraints [in China] on the taking of sworn testimony for foreign proceedings”). These  
 12 holdings—remarkably consistent across numerous U.S. federal courts—cut decisively in favor of  
 13 IPI’s position; if taking a voluntary deposition violates Article 284’s dictate that “no foreign agency  
 14 or individual” may “collect evidence” without authorization from Chinese authorities, a party’s trial  
 15 testimony would unquestionably violate that law.

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 18 through requests to its Central Authority under the Hague Evidence Convention.” *See Taking*  
*19 Voluntary Depositions of Willing Witnesses*, U.S. DEP’T OF STATE BUREAU OF CONSULAR AFFS.  
 CHINA JUD. ASSISTANCE INFO. (May 1, 2019),  
 20 <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/China.html> (last visited Jan. 2, 2023).

21       <sup>3</sup> In this matter, IPI has twice taken the deposition of Sardini’s designated representative, Qing  
 22 (Steve) Zuo, while he was located in mainland China. If the Court concludes that these  
 23 depositions may not be used for the purpose of cross-examination at trial, IPI would agree to  
 24 retake Mr. Zuo’s deposition prior to the resumption of trial.

1           As noted above, the potential distinction between discovery and trial evidence was  
 2 recognized by the plaintiff in *Glam & Glitz Nail Design, Inc.*, in which the plaintiff, as well as one  
 3 of its Chinese legal experts, conceded that a U.S. court could not take evidence from a witness in  
 4 China, while arguing (unsuccessfully) that a voluntary deposition could be allowed. 2022 WL  
 5 17078947, at \*1. Further, the only case identified in which a U.S. court allowed a deposition to  
 6 potentially take place in mainland China also recognized that distinction. In *Wu v. Sushi Nomado*  
 7 *of Manhattan, Inc.*, No. 17CV04661 (MKV) (DF), 2021 WL 7186735, at \*1-3, 11 (S.D.N.Y. Oct.  
 8 29, 2021), *report and recommendation adopted in part*, No. 17-CV-4661-MKV-DCF, 2022 WL  
 9 597280 (S.D.N.Y. Feb. 28, 2022), the defendant moved for terminating sanctions based on the  
 10 plaintiff's continued failure to make himself available for a deposition in violation of the court's  
 11 discovery orders—the parties had initially agreed that the plaintiff (located in China) would need to  
 12 travel outside of China to conduct the deposition, but the plaintiff had made little effort to do so.  
 13 The court imposed sanctions against the plaintiff and ordered that he make himself available for a  
 14 deposition within 45 days, either from within China or another location. *Id.* at \*11-12. However,  
 15 the court noted that this order was solely with respect to a *discovery* deposition and declined to  
 16 allow, at that time, the plaintiff to conduct a *de bene esse* deposition for use as a substitute for trial  
 17 testimony.<sup>4</sup> *Id.* at \*12. Thus, the sole instance in which a court allowed (potentially) a deposition  
 18 to be taken from mainland China involved a plaintiff attempting to use Chinese law as a shield to  
 19 avoid providing testimony, making this holding clearly distinguishable and inapposite from the

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 21         <sup>4</sup> Indeed, the reason that the plaintiff proposed to conduct such a deposition was based on a  
 22 concern that the plaintiff would be unable to travel from China for the trial and the plaintiff's  
 23 recognition that his remote trial testimony from China would not be possible since it would violate  
 24 Chinese law. *See id.* at \*2-4.

1 circumstance presented here. And even in *Wu*, the court specifically limited its order to allow the  
2 taking of a discovery deposition, rather than testimony for use at trial. This narrow holding  
3 reinforces the consistent findings of U.S. courts that remote testimony from China may not be  
4 taken or presented at trial as it violates Chinese law.

i. The Court cannot bypass the Hague Convention to permit remote testimony from witnesses appearing from China.

At the December 15, 2022 hearing, Plaintiff referenced three cases that purportedly support its argument that video testimony can be taken from China, in accordance with the Federal Rules of Civil Procedure, despite the requirements of the Hague Convention:<sup>5</sup> (1) *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Ct. for S. Dist. of Iowa*, 482 U.S. 522 (1987), (2) *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468 (9th Cir. 1992), and (3) *Wang v. Hull*, No. C18-1220RSL, 2020 WL 3315990, at \*1 (W.D. Wash. June 18, 2020), *reconsideration denied*, No. C18-1220RSL, 2020 WL 8839776 (W.D. Wash. July 6, 2020).

As an initial matter, each of those cases—the latter two relying on the first—are inapt here because, in each, the court’s analysis was limited to questions regarding whether pretrial written discovery matters must be provided pursuant to the requirements of the Hague Convention. *Societe Internationale*, 482 U.S. at 524 (involving “answers to interrogatories, the production of documents, and admissions”); *Richmark Corp.*, 959 F.2d at 1473 (involving failure to respond to

<sup>5</sup> But see *Tsien v. Bd. of Regents of Univ. Sys. of Georgia*, No. CV 121-008, 2021 WL 6617308, at \*2 (S.D. Ga. Dec. 20, 2021) (“Notwithstanding [p]laintiff’s theories about Chinese law, depositions in China . . . ‘as a general matter, [may] only be accomplished through requests to its Central Authority under the Hague Evidence Convention.’”) (quoting *Yan v. Zhou*, No. 18-CV-4673, 2021 WL 4059478, at \*3 (E.D.N.Y. Sept. 7, 2021)).

1 “discovery requests and interrogatories”); *Wang v. Hull*, 2020 WL 3315990, at \*3 (involving a  
 2 motion to strike discovery responses, declarations, and exhibits provided by witnesses in China).  
 3 Here, the issue is not whether the plaintiff may provide written responses or documents from China  
 4 in response to discovery requests—the issue addressed by this line of cases. Instead, the relevant  
 5 question is whether witnesses may provide trial testimony while located in China.<sup>6</sup>

6 On that question, the rulings by the court in *Wang v. Hull* are extraordinarily apt. There,  
 7 four days after the court issued its opinion involving written discovery (on which Plaintiff relies),  
 8 the court issued a separate order addressing the deposition testimony of a witness located in China,  
 9 which contradicts Plaintiff’s position on this issue. See *Wang v. Hull*, No. C18-1220RSL, 2020  
 10 WL 4734930, at \*2 (W.D. Wash. June 22, 2020). In this opinion, the court noted that the parties  
 11 initially agreed to conduct the plaintiff’s deposition at the plaintiff’s home in China. *Id.* at \*1.  
 12 However, after learning of Article 284’s restrictions, the defendant “notified plaintiff that the video  
 13 deposition could not occur as previously contemplated and requested assistance in formulating  
 14 another plan.” *Id.* When the plaintiff refused, the defendant filed a “motion to compel plaintiff to

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 16 <sup>6</sup> At the December 15, 2022 hearing, Plaintiff suggested that, based on this line of cases, the Court  
 17 could accept remote testimony from China based on a “comity analysis.” First, as noted, the  
 18 analysis presented in *Societe Internationale* and its progeny applies only to questions of whether  
 19 a party seeking discovery must follow the dictates of the Hague Convention, which is not  
 20 applicable to the question of whether trial testimony may be offered from China. Second, even  
 21 applying the analysis set forth in *Societe Internationale*, comity considerations would weigh  
 22 against allowing the remote witness testimony since the parties at risk of violating foreign law  
 23 are not simply a foreign litigant subject to a discovery order, but indeed all parties and counsel  
 24 involved in this case, including the District Court itself. Comity considerations would weigh  
 heavily against allowing a violation of Chinese law by a U.S. District Court—as federal courts  
 have recognized. See *Societe Nationale*, 482 U.S. at 546 (“American courts should therefore  
 take care to demonstrate due respect for any special problem confronted by the foreign litigant  
 on account of its nationality or the location of its operations, and for any sovereign interest  
 expressed by a foreign state.”)

1 appear for deposition at a place where the parties can take his testimony without fear of reprisal by  
 2 the People's Republic of China - such as Seattle, Hong Kong, Macau, Seoul, or Taipei - and using  
 3 video conferencing software used commercially by court reporters[.]” *Id.* at \*2. The court granted  
 4 that motion. *Id.* That is, the court acknowledged the constraints of Article 284 and permitted the  
 5 deposition to proceed by video *only if* conducted outside of mainland China. Indeed, the court  
 6 refused to bind the defendant to his prior agreement to take the plaintiff’s deposition in China  
 7 because doing so “unknowingly put [defendant], his counsel, the court reporter, and other  
 8 participating foreigners in legal jeopardy.” *Id.* at \*1.

9       The court in *Wang* went on to conclude that, while it is possible that Chinese authorities  
 10 might construe Article 284 in a permissive way (or decline to enforce the law against foreigners  
 11 who do not set foot in China), federal courts “will not require [parties] to bet on that outcome.” *See*  
 12 *Wang*, 2020 WL 4734930, at \*1; *see also Glam & Glitz Nail Design, Inc.*, 2022 WL 17078947, at  
 13 \*3 (stating same); *Modern Investment, Inc.*, No. 19-0266, at 4 (stating same); *Tao*, 2021 WL  
 14 5205446, at \*7 (“The [c]ourt will not direct or encourage the parties to participate in a proceeding  
 15 that puts them at risk of violating Chinese law.”). This holding is even more appropriate here,  
 16 where the parties at risk of potentially violating Chinese law include not only the litigants,  
 17 witnesses, and counsel, but the Court itself, as well as its officers.

18       B.     The Court should strike the testimony that was previously taken from witnesses  
appearing virtually from China.

19       The Court should strike the testimony that was taken from witnesses appearing virtually  
 20 from China because (1) the manner of testimony was unlawful under Chinese law and failing to  
 21 strike would subject all participants involved in facilitating such testimony—including the Court—  
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 23

1 to potential penalties associated with violating Chinese law, and (2) the procedural posture of this  
 2 case allows Plaintiff to remedy any prejudice caused by striking this testimony by offering its  
 3 witnesses' testimony in a non-violative manner. Similarly, the Court should prohibit any future  
 4 testimony taken from witnesses appearing virtually from China.

5       *i. The previous testimony by Jun, Lu, and Zuo was unlawful, and a failure to*  
 6 *strike that testimony could subject the parties and the Court to legal*  
*consequences in China.*

7       As discussed above, Article 284 states that “no foreign agency or individual may, without  
 8 the consent of the competent authorities of the People's Republic of China . . . collect evidence  
 9 within the territory of the People's Republic of China.” It is thus the taking of testimony as  
 10 *evidence* that violates Article 284. By striking the testimony previously given by witnesses in  
 11 China, the Court could ensure that this testimony would not be evidence, remedying the prior  
 12 violation.

13       In *Junjiang Ji*, 2019 WL 1441130, at \*10-11, the court learned in the midst of trial that the  
 14 plaintiff had provided testimony from mainland China. In response, the court struck the plaintiff's  
 15 testimony based on a finding that “the manner in which [plaintiff] testified was unlawful under  
 16 Chinese law,” and ordered that the plaintiff could not offer further remote testimony. *Id.* The  
 17 Court also noted that, “[b]y participating in those proceedings, [] counsel and potentially all other  
 18 parties involved” violated Chinese law and could be subject to specific penalties, including fines,  
 19 deportation or criminal liability. *Id.* at \*11 (citing Article 15 of the Regulations on the  
 20 Administration of Foreign Law Firms' Representatives Offices in China,<sup>7</sup> Article 81 of the Exit and

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21  
 22       <sup>7</sup> Article 15 of the Regulations on the Administration of Foreign Law Firms' Representatives  
 23 Offices in China “prohibits foreign attorneys from rendering legal services involving . . .  
 Chinese legal issues,” while Article 30 “provides that the unauthorized practice of law in China

1 Entry Administration Law of the People's Republic of China,<sup>8</sup> and the Criminal Law of the  
 2 People's Republic of China<sup>9</sup>). As noted above, such consequences potentially extend to the Court  
 3 itself and its officers, as the Court administered an oath to witnesses testifying from China and took  
 4 those testimonies as part of a judicial proceeding. *See Modern Investment, Inc.*, No. 19-0266, at 10  
 5 (observing that “th[e] [c]ourt would be violating the Chinese judicial sovereignty without following  
 6 ‘Chinese and international laws and conventions’”); *see also Taking Voluntary Depositions of*  
 7 *Willing Witnesses, supra* n. 2 (participation in the taking of testimony “could result in the arrest,  
 8 detention or deportation of the American attorneys and other participants” involved).

9           *ii. The procedural posture in this case favors striking the testimony already  
 10 taken from witnesses located in China.*

11           When this trial resumes on February 7, 2023, Plaintiff will still be presenting its case-in-  
 12 chief. Given that Plaintiff has not yet rested its case, the Court can allow Plaintiff to recall its  
 13 witnesses before it does so, to testify in a manner that does not violate Chinese law and subject the  
 14 parties and Court to potential penalties, either by testifying (1) in-person in Saipan, or (2) remotely  
 15 from a jurisdiction from which such testimony would be permissible. Macau and Hong Kong, for  
 16 example, are “subject to different rules than mainland China.” *Shenzen Synergy Digital Co.*, 2021

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17           [can] subject the violating attorney to a fine of not less than RMB50,000 and not more than  
 18 RMB300,000, i.e. approximately US\$ 7,500 to US\$ 45,000.” *Id.* (internal citations and quotation  
 marks omitted).

19           <sup>8</sup> Article 81 of the Exit and Entry Administration Law of the People's Republic of China  
 20 “authorizes the Chinese government to deport ‘foreigners’ who violate Chinese law,” even where  
 such violation does not constitute a crime. *Id.*

21           <sup>9</sup> Pursuant to Article 13 of the Criminal Law of the People's Republic of China, “the Chinese  
 22 government appears to have broad discretion to punish conduct that it deems a crime,” including  
 acts that impact the sovereignty of the state. *Id.*

1 WL 6072565, at \*3 (finding that testimony could not be taken from mainland China, but that  
 2 “permitting trial testimony from Macau would not violate Chinese law”); *Junjiang Ji*, 2019 WL  
 3 1441130, at \*3-6, (striking trial testimony given from mainland China but noting a distinction for  
 4 testimony given from Hong Kong or Taiwan); *Glam & Glitz Nail Design, Inc.*, 2022 WL  
 5 17078947, at \*4 (barring deposition until plaintiff could “provide assurance that the witness will sit  
 6 for the deposition outside mainland China”); *Inventus Power*, 339 F.R.D. at 509 (denying motion to  
 7 depose witness in China but granting leave to take deposition in Macau). The procedural posture of  
 8 this case thus allows the Court to cure any violations of Article 284 by striking the otherwise  
 9 unlawful testimony, such that it no longer constitutes impermissible “evidence” under Chinese law,  
 10 and it allows Plaintiff to resubmit its testimony in a lawful manner, reducing any prejudice that  
 11 might accrue based on the Court’s striking the prior unlawful testimony of Plaintiff’s witnesses.

12           *iii. Because Article 284 makes remote testimony from China unlawful, the Court  
 13 should strike the prior testimony to avoid causing prejudice to IPI.*

14           Given that Article 284 prohibits the remote testimony in U.S. courts by individuals located  
 15 in mainland China, the Court should also strike the prior testimony of Plaintiff’s witnesses who  
 16 appeared from China so as not to cause prejudice to IPI. As noted above, due to Plaintiff’s  
 17 numerous discovery violations, the Court has specifically allowed IPI to recall Plaintiff’s witnesses  
 18 that have already testified to question them about newly disclosed documents. *See* ECF Nos. 78,  
 19 79. Given that certain of those witnesses are located in mainland China, if the Court allowed their  
 20 prior testimony to stand, while prohibiting further testimony from China, IPI would have no  
 21 opportunity to cross-examine those witnesses on evidence that Plaintiff improperly disclosed only  
 22 after trial was underway. *See Emerson Elec. Co. v. Suzhou Cleva Elec. Appliance Co.*, No. 4:13-  
 23  
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1 CV-01043 SPM, 2014 WL 2986685, at \*5 (E.D. Mo. July 1, 2014) (“It would be unfair to permit  
 2 [d]efendants to rely on [declarant’s] statements in his declarations but then insulate those  
 3 statements from any examination, particularly when [d]efendants have not offered any reasonable  
 4 explanation for their conduct”); *Flexsteel*, 2019 WL 13164175, at \*8 (“The only way to cure this  
 5 prejudice is to exclude Mr. Li’s declaration and any evidence relying on his prior statements or  
 6 testimony.”). Unless Plaintiff made these witnesses available to continue testifying from a lawful  
 7 location, IPI, and this Court, would be forced to either continue to violate Chinese law, or to forfeit  
 8 the opportunity to conduct a full cross-examination of these important witnesses. To avoid this  
 9 clear prejudice, the Court should strike the prior remote testimony offered from China.

10 **IV. CONCLUSION**

11 Given the plain language of Article 284, the State Department’s guidance, and extensive  
 12 U.S. case law, IPI respectfully submits that the appropriate resolution to the issue raised by the  
 13 Court is to (1) strike the testimony taken from individuals located in China as unlawfully obtained  
 14 evidence under Chinese law, and (2) prohibit any further virtual testimony from witnesses  
 15 appearing remotely from China.

16 Dated: January 4, 2022

Respectfully Submitted,

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